

APPEAL NO. 010612

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 1, 2001, a contested case hearing was held. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) the claimant did not have disability; and (3) the respondent (carrier) would not be relieved of liability for compensation on the basis of the claimant's intoxication, if the alleged injury were compensable. The claimant urges reversal of the hearing officer's decision with regard to compensability and disability as being against the great weight of the evidence. The carrier urges affirmance. The hearing officer's determination with regard to intoxication was not appealed and has become final.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden to prove that she sustained damage or harm to the physical structure of the body, arising out of and in the course and scope of her employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer did not err in determining that the claimant did not have disability. The 1989 Act requires the existence of a compensable injury as a prerequisite to the a finding of disability. Section 401.011(16). Because the claimant was found not to sustain a compensable injury, the hearings officer properly concluded that the claimant did not have a disability.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge